

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3: 10cr174**

UNITED STATES OF AMERICA,)	
)	
)	
Vs.)	ORDER
)	
JAMAR SERON RANDALL,)	
)	
Defendant.)	
)	

THIS MATTER is before the court on defendant's Objections to Judge Cayer's Denial of defendant's second Motion to Withdraw Plea (#37).¹ At sentencing, defendant renewed his objections to the Order of Honorable David S. Cayer, United States Magistrate Judge, and, upon request of counsel, the court continued sentencing to allow counsel time to explain to defendant the consequences of withdrawing his plea.

On October 21, 2011, defendant filed his "Notice of Intention of Defendant to Continue Sentencing to Proceed with the Hearing on the Motion to Withdraw his Guilty Plea" (#46). Based on such notice, it appears that defendant seeks a hearing on his objections to Judge Cayer's July 14, 2011, determination that no basis had been shown to allow withdrawal of the plea of guilty. The court will conduct a hearing on such objections.

Finally, defendant seeks to be heard on his Motion to Suppress Evidence (#9). Review of the court's docket indicates that Honorable Frank D. Whitney, United States District Judge, denied defendant's Motion to Continue Suppression Hearing (#14), and then terminated that motion after defendant and the government filed a Plea Agreement (#15) the

¹ Such objections were docketed as a "Response," an event which does not generate a notification of a pending matter for court consideration. The Clerk of this court is respectfully requested to reformat such docket entry in a manner that shows a pending matter.

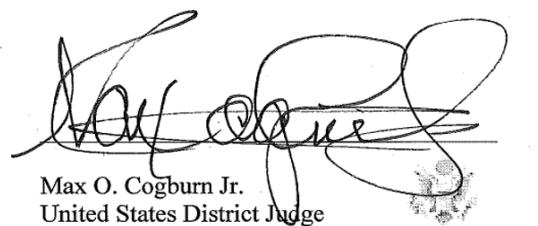
same day. The court has reviewed that Plea Agreement and there is no language indicating that the Plea was conditional or that defendant had preserved the right to pursue that motion. Thus, defendant seeks a hearing on a motion that is no longer pending before this court and which may only be heard if the court allows withdrawal of his plea.

While the court anticipates that this matter will be restored to Judge Whitney's trial docket if the withdrawal of plea is allowed (as Judge Whitney has done extensive work on this matter, including preparation for trial), the undersigned will do the most that he can to resolve as many preliminary matters before Judge Whitney returns. To that end, the objections will be heard on November 21, 2011, at 4 p.m. and, if defendant refiles his motion to suppress *and* the court allows the withdrawal of the plea, the Motion to Suppress will be heard at 9 a.m. on November 22, 2011. Counsel for defendant may wish to go ahead and refile defendant's Motion to Suppress so that a response can be filed in advance of the potential hearing.

ORDER

IT IS, THEREFORE, ORDERED that this action and defendant's Objections to Judge Cayer's Denial of defendant's second Motion to Withdraw Plea (#37) are CALENDARED for hearing on November 21, 2011, at 4 p.m. In the event defendant refiles his Motion to Suppress, such motion is tentatively scheduled for hearing on November 22, 2011, at 9 a.m.

Signed: October 26, 2011



Max O. Cogburn Jr.
United States District Judge